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Mr. Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
U.S. Department of Commerce
1401 Constitution Ave., NW, Room 2111
Washington, DC 20230

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FOREIGN-TRADE ZONES BOARD
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Re: ThyssenKrupp Subzone Application (Docket No. 51-2008)
Comment on Preliminary Recommendation

Dear Mr. McGilvray:

ThyssenKrupp Steel and Stainless USA, LLC (ThyssenKrupp) has reviewed the preliminary recommendation of the Foreign Trade Zones Board staff for the approval of the subzone application with a restriction limiting the FTZ benefits to ThyssenKrupp's production for export. We continue to believe the record supports a decision to approve the subzone without limitation. We have the following comments on the staff's analysis and preliminary recommendation.

<u>Potential Negative Impact on Domestic Raw Material Producers</u>.

The staff cites two primary reasons for the restriction. First, the staff raises a concern that domestic raw material producers could be negatively impacted if the ThyssenKrupp application is approved without restriction. ThyssenKrupp has previously provided very detailed sourcing documentation which directly contradicts this assertion. If ThyssenKrupp's projections occur, there will be no harm to domestic producers. As noted by the staff's use of the word "could" in its conclusions ("could have a negative impact on domestic raw material suppliers"; "could harm certain domestic raw materials producers"), the actual outcome is by no means definitively determined by the record. We acknowledge that the Foreign Trade Zones Board may restrict grants of authority to protect the public interest, but submit that a more appropriate restriction would be for the Foreign Trade Zones Board to monitor actual impact, and adjust approval accordingly if ThyssenKrupp's practice is not consistent with statements made by ThyssenKrupp in its application.

ThyssenKrupp stands by the statements made during the course of this proceeding, firmly believes that domestic raw material suppliers will not be negatively impacted by ThyssenKrupp operations, and believes it appropriate for the Foreign Trade Zones Board to hold it to that standard. The record contains no contradictory evidence, only assertions without supporting data. Restricting ThyssenKrupp operations because it is possible that ThyssenKrupp will not operate in the manner described in its application is simply unmerited, especially when a procedure to deal with just this situation is set forth in the Regulations, 15 CFR 400.31(d).

If an export restriction is to remain in place (and we strongly believe it should not), it should be directed at the four specific raw materials where there is evidence in the record of possible impact on domestic producers: titanium, ferrosilicon, molybdenum, and zinc. Again, we believe even with regard to these raw materials, ThyssenKrupp's explanation of intended sourcing and anticipated impact should be sufficient to allow unrestricted approval.

With regard to the other specifically identified raw materials in ThyssenKrupp's application, there is no evidence in the record whatsoever that even suggests possible harm to domestic raw material suppliers. In fact, for several of the identified raw materials, including chromium, ferrochromium, ferroniobium, and ferromanganese, the record, including government documents, conclusively demonstrates that domestic production is extraordinarily limited, or nonexistent. See January 8, 2009 ThyssenKrupp letter to the Foreign Trade Zones Board, Attachment B. With regard to these items, it is impossible for U.S. raw material suppliers to be adversely impacted. At a minimum, raw materials for which there is no evidence in the record of any potential adverse impact to domestic raw material suppliers should not be subject to the export only restriction.

Impact on Domestic Producers.

The second reason stated for a restricted grant relates to equal opportunity of steel producers to use FTZ procedures. ThyssenKrupp has asserted that all domestic producers are similarly situated, and may themselves request FTZ status. The preliminary recommendation states that unlike ThyssenKrupp, the multiple site structure of other producers, and especially the prevalence of mini-mills in the U.S., will make accessing FTZ benefits "overly complicated and costly" for other companies. The staff goes on to specifically reference the need for multiple applications, activations, and bonds for other companies in comparison to single site costs for ThyssenKrupp.

We believe this assessment is inaccurate in two respects. First, it makes costs assumptions without supporting data. Some of these assumptions are simply incorrect. Second, the mini-mill and integration concepts may cause differences in foreign trade zone operating cost relative to carbon steel production, but are inapplicable to stainless steel production.

The proposition that cost will be more significant for others fails to take into account both the extra expense a first applicant like ThyssenKrupp incurs in comparison to subsequent requests, and the cost savings and synergies of multiple zone operations by a single company. Companies which have facilities in multiple states that would benefit from FTZ status will have to file at least one FTZ application per state, and activate each location. While separate applications and activations are necessary, the materials compiled for the first are highly leverageable for each necessary site. Bonds, not expensive to begin with, are based on importer volume rather than location. FTZ operators with the same aggregate volume as ThyssenKrupp will not incur excess bond costs. While it is difficult to offer precise cost comparisons without detailed knowledge of facts, based on Ernst & Young's extensive experience with foreign trade zone projects, we think it quite likely that any U.S. steel company could make application for, and prepare activation materials for, all of its U.S. facilities which are necessary to achieve foreign trade zone benefits similar to those requested by ThyssenKrupp at a cost that is no more than ThyssenKrupp's total FTZ expenditure for this project. Moreover, operations can be centralized, and multiple zones run no more expensively than a complex standalone zone like ThyssenKrupp's. There are numerous examples of centralized foreign trade zone operating structures throughout the U.S. in a variety of industries – one energy company manages nine subzones from a central location. There is simply no empirical evidence that any steel company would incur more cost to achieve similar benefits. In fact, at the hearing the opponents acknowledged that they had not investigated FTZ status in detail. Again, based on our experience, we think overall cost structures would be quite similar.

More significantly, while the staff's underlying premise accurately describes carbon steel production, it is not at all accurate for stainless steel. Mini-mills make carbon steel. According to a 2009 report from the EPA only 4% of mini-mill production is specialty and stainless steel. See, US Environmental Protection Agency, *Emission Factor Documentation for AP-42 Section 12.5.1., Iron and Steel - Minimills*, April, 2009. Page 2, <http//www.epa.gov/ttn/chief/ap42/ch12/bgdocs/b12s0501.pdf>. Moreover, the amount of stainless steel production integration at a single site is irrelevant to foreign trade zone operations. This is because inverted tariffs on imported alloys needed to produce stainless steel will be completely eliminated at the first stage of stainless steel production in a foreign trade zone. As a result, for stainless steel production, foreign trade zone benefits may be obtained with foreign trade zone status only at the first operational site alone; subsequent processing locations would not benefit from foreign trade zone status. No matter how ThyssenKrupp divided its stainless steel operations, whether at one or a dozen locations, it can only benefit from foreign trade zone status at the initial "melt shop" stage, and would have no need for foreign trade zone designation at any subsequent processing locations. In the U.S., all stainless steel producers are similarly situated.

In fact, the staff's premise that other domestic steel producers would face multiple foreign trade zone burdens and costs in comparison to ThyssenKrupp is clearly incorrect for stainless steel production. The three largest stainless steel producers in the United States could replicate the zone benefits sought by ThyssenKrupp with a combined total of four subzones.

More specifically, each of the three largest producers of stainless steel in the United States would have a foreign trade zone profile remarkably similar to that of ThyssenKrupp if they pursued zone status. North American Stainless has a single production location with melting capacity in Ghent, Kentucky. If North American Stainless pursued zone status to mirror the benefits sought by ThyssenKrupp, it would do so with a single subzone application and operation. North American Stainless' production capacity in Ghent is larger than that contemplated by ThyssenKrupp in Alabama. Consequently, we would expect that zone operations would be more cost-effective than ThyssenKrupp's; cost of operating the zone would be similar to ThyssenKrupp's, but production would be greater. Allegheny Ludlum has two melt shops, in Brackenridge, Pennsylvania and Midland, Pennsylvania. Both adjacent to the Pittsburgh Port of Entry, these could be a single subzone (or two companion subzones under the same grantee), and as the combined melt shop capacity of these facilities is greater than that contemplated by ThyssenKrupp, we would also expect that this subzone could be operated more cost-effectively than ThyssenKrupp's. AK Steel would require two subzones, one for its facility in Mansfield, Ohio, and one for its facility in Butler, Pennsylvania. The capacity of each of these melt shops, however, is roughly equivalent to that contemplated by ThyssenKrupp, and consequently even if these were operated as standalone zone operations, cost and net benefit for each would be roughly equivalent to that anticipated by ThyssenKrupp. As noted above, many companies operate multiple subzones using shared, centralized resources, and are able to achieve lower effective operating costs than if the subzones had been operated on a standalone basis. It seems quite likely that AK Steel could actually have lower operating costs, and greater net benefits, with subzones at both of its melt shops than ThyssenKrupp will be able to achieve.

The staff's assumption that other US stainless steel producers will face burdens and costs of FTZ operations different than those faced by ThyssenKrupp is plainly incorrect. The three largest US stainless steel producers would need only a combined total of four subzones to achieve the same zone benefits sought by ThyssenKrupp. Each one of these applications would undoubtedly be less expensive than ThyssenKrupp's first application for the industry. Operating costs should be quite similar, and as each of the other three producers has a larger capacity than that planned by ThyssenKrupp, net foreign trade zone benefits should be greater. Placing restrictions on ThyssenKrupp's stainless steel production to equalize opportunity with other producers is misplaced. Opportunity is already equal.

The staff's commentary on the comparative levels of U.S. activity and employment also fails to distinguish between carbon and stainless steel production. ThyssenKrupp does intend to import carbon steel slabs from Brazil. Carbon slabs, however, are unconditionally duty free, and should not be a factor in the manufacturing authority requested. More importantly, these slabs are not used in stainless steel production. ThyssenKrupp FTZ produced stainless steel is expected to have more than 75% U.S. value – added content.

It is correct that ThyssenKrupp will be shipping some stainless steel production for cold rolling in Mexico. Note, however, that there would be no foreign trade zone benefit for cold rolling operations if conducted in the U.S. Moreover, as suggested by the staff's analysis, the Mexican plant is operational, and it will obtain steel from some source. ThyssenKrupp's desire is to supply a significant amount of that steel from Alabama, and it is overall foreign trade zone savings that will allow ThyssenKrupp to do this. Limiting the FTZ savings limits the export opportunity.

Simply put, while we believe that FTZ use would be equally available to all U.S. steel producers, the only factors which could cause inequity relate to carbon steel. Restricting foreign trade zone benefits for stainless steel to remedy an inequity identified for carbon steel is misplaced, and will only have the result of reducing ThyssenKrupp's capacity to effectively export steel, not increase it.

Request for Reconsideration

We request that the Foreign Trade Zones Board staff reconsider its preliminary recommendation. We believe the record supports approval without restriction. Some of the assumptions are inaccurate, and concerns expressed by the staff cannot actually occur. With regard to others, if the Foreign Trade Zones Board is concerned with adverse consequences that might occur if the business case presented by ThyssenKrupp turns out to be inaccurate, the Foreign Trade Zones Board has an existing procedure to address it. To place a restriction on the grant that prevents things that might, but are unlikely to occur, will only serve to negatively impact the ability of ThyssenKrupp's Alabama plant to compete in the global market with production from foreign plants.

If the Foreign Trade Zones Board staff determines that a restriction is merited, we suggest that the restriction be more precisely directed at the perceived issues. First, concern about the equality of access only applies to carbon steel production, not stainless steel production. While we strongly contest the conclusion that there is any inequity whatsoever, there is no premise upon which that conclusion can be reached for stainless steel production. A general, blanket export only limitation of FTZ benefits for stainless steel production is misplaced; it does not address the concerns identified by the staff, and works only to hinder ThyssenKrupp's ability to expand export capacity at the Alabama plant, the very goal the staff identifies it wishes ThyssenKrupp to achieve. Second, raw material concerns have been identified only with regard to four materials, and have been conclusively negated with regard to a number of others. Restrictions on foreign trade zone benefits related to raw materials that cannot possibly impact U.S. production again fail to meet the staff's objectives with precision, and unnecessarily restrict ThyssenKrupp.

Finally, to the extent restrictions are part of the Foreign Trade Zones Board staff's final recommendation and Board Order, we believe it important that the language used by the Foreign Trade Zones Board staff "approval of the application with a restriction limiting the foreign trade zone benefits to ThyssenKrupp's production for export" remain the appropriate descriptor of the grant limitation. The actual foreign trade zone accounting mechanics to allow ThyssenKrupp to access foreign trade zone benefits for stainless steel produced for export are complex and detailed development will need to occur with implementation of the foreign trade zone accounting system. The language recommended by the Foreign Trade Zones Board staff clearly states the intent that ThyssenKrupp be allowed to achieve foreign trade benefits for steel produced for exportation, establishes the conceptual framework for the restriction, and allows details of the mechanics to be determined at a later date. This type of language, adjusted appropriately for more targeted, precise restrictions, is essential to allow the Foreign Trade Zones Board staff's recommendation to be actually implemented.

We appreciate your consideration of these comments.

Very truly yours,

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